

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

MAT-WAH INTERNATIONAL §  
ENTERPRISE, LTD., ET AL. §  
§  
V. § CASE NO. 4:11-CV-140  
§ Judge Mazzant  
TERRY ENMON §

## **MEMORANDUM OPINION AND ORDER**

Pending before the Court is Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted, and in the Alternative, Motion for Summary Judgment (Dkt. #24). Having considered the relevant pleadings, the Court finds that the motion should be denied.

On January 30, 2012, Defendant filed his motion to dismiss, or in the alternative, motion for summary judgment. On February 16, 2012, Plaintiffs filed their response (Dkt. #27). On February 23, 2012, Defendant filed a reply (Dkt. #29). On March 5, 2012, Plaintiffs filed a sur-reply (Dkt. #32). On February 23, 2012, Defendant filed a motion to strike (Dkt. #28).<sup>1</sup>

### **Legal Standard**

Defendant moves for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure, which authorizes certain defenses to be presented via pretrial motions. A Rule 12(b)(6) motion to dismiss argues that, irrespective of jurisdiction, the complaint fails to assert facts that give rise to legal liability of the defendant. The Federal Rules of Civil Procedure require that each claim in a complaint include "a short and plain statement . . . showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The claims must include enough factual allegations "to raise a right to relief

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<sup>1</sup> The Court will address this motion in a separate order.

above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570).

Rule 12(b)(6) provides that a party may move for dismissal of an action for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). The Court must accept as true all well-pleaded facts contained in the plaintiff’s complaint and view them in the light most favorable to the plaintiff. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In deciding a Rule 12(b)(6) motion, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555; *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). “The Supreme Court recently expounded upon the *Twombly* standard, explaining that ‘[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Gonzalez*, 577 F.3d at 603 (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* “It follows, that ‘where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not ‘shown’ - ‘that the pleader is entitled to relief.’” *Id.*

In *Iqbal*, the Supreme Court established a two-step approach for assessing the sufficiency of a complaint in the context of a Rule 12(b)(6) motion. First, the Court identifies conclusory allegations and proceeds to disregard them, for they are “not entitled to the assumption of truth.”

*Iqbal*, 129 S.Ct. at 1951. Second, the Court “consider[s] the factual allegations in [the complaint] to determine if they plausibly suggest an entitlement to relief.” *Id.* “This standard ‘simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of’ the necessary claims or elements.” *Morgan v. Hubert*, 335 F. App’x 466, 470 (5th Cir. 2009). This evaluation will “be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 129 S.Ct. at 1950.

In determining whether to grant a motion to dismiss, a district court may generally not “go outside the complaint.” *Scanlan v. Tex. A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003). When ruling on a motion to dismiss a *pro se* complaint, however, a district court is “required to look beyond the [plaintiff’s] formal complaint and to consider as amendments to the complaint those materials subsequently filed.” *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); *Clark v. Huntleigh Corp.*, 119 F. App’x 666, 667 (5th Cir. 2005) (finding that because of plaintiff’s *pro se* status, “precedent compels us to examine all of his complaint, including the attachments”); Fed. R. Civ. P. 8(e) (“Pleadings must be construed so as to do justice.”). Furthermore, a district court may consider documents attached to a motion to dismiss if they are referred to in the plaintiff’s complaint and are central to the plaintiff’s claim. *Scanlan*, 343 F.3d at 536.

The purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Summary judgment is proper if the pleadings, the discovery and disclosure materials on file, and any affidavits “[show] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute about a material fact is genuine “if the evidence is such that

a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The trial court must resolve all reasonable doubts in favor of the party opposing the motion for summary judgment. *Casey Enterprises, Inc. v. American Hardware Mut. Ins. Co.*, 655 F.2d 598, 602 (5th Cir. 1981) (citations omitted). The substantive law identifies which facts are material. *Anderson*, 477 U.S. at 248.

The party moving for summary judgment has the burden to show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Id.* at 247. If the movant bears the burden of proof on a claim or defense on which it is moving for summary judgment, it must come forward with evidence that establishes “beyond peradventure *all* of the essential elements of the claim or defense.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). But if the nonmovant bears the burden of proof, the movant may discharge its burden by showing that there is an absence of evidence to support the nonmovant’s case. *Celotex*, 477 U.S. at 325; *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 424 (5th Cir. 2000). Once the movant has carried its burden, the nonmovant must “respond to the motion for summary judgment by setting forth particular facts indicating there is a genuine issue for trial.” *Byers*, 209 F.3d at 424 (citing *Anderson*, 477 U.S. at 248-49). The nonmovant must adduce affirmative evidence. *Anderson*, 477 U.S. at 257.

### **Analysis**

Plaintiffs assert claims for fraud/fraud in the inducement. Defendant asserts that Plaintiffs failed to plead facts sufficient demonstrate Defendant’s intent or that he had the requisite knowledge at the time the representations at issue were made. With respect to fraud-based claims, Rule 9(b) requires a plaintiff to “state with particularity the circumstances constituting the fraud.” Fed. R. Civ.

P. 9(b). At the very least, “Rule 9(b) requires allegations of the particulars of time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.” *Tel-Phonic Servs. v. TBS Int’l, Inc.*, 975 F.2d 1134, 1139 (5th Cir. 1992) (quotations and citations omitted). “Put simply, Rule 9(b) requires ‘the who, what, when, where, and how’ to be laid out.” *Benchmark Elecs., Inc. v. J.M. Huber Corp.*, 343 F.3d 719, 724 (5th Cir. 2003) (quoting *Williams v. WMX Techs Inc.*, 112 F.3d 175, 178 (5th Cir. 1997)). Anything less than this fails to provide adequate notice of the nature and grounds of the claim. *Hart v. Bayer Corp.*, 199 F.3d 239, 248 n.6 (5th Cir. 2000).

After reviewing the First Amended Complaint, and at this stage in the proceedings, the Court finds the pleadings are sufficient to place Defendant on notice of the nature and grounds of Plaintiffs’ fraud claims. Therefore, the first amended complaint satisfies the requirements of Rule 9(b) and the Court finds that Plaintiffs have stated plausible claims for purposes of defeating a Rule 12(b)(6) motion.

Next, Defendant moves in the alternative for summary judgment on the fraud claims, asserting as follows: (1) there is no evidence that Defendant made representations that are false statements of act; (2) there is no evidence that any factual representation was made by Defendant with knowledge of its falsity or with reckless disregard of its truth; (3) there is no evidence that Defendant made any representation of any nature to Plaintiff Marvelous Enterprise Company, Ltd.; and (4) there is no evidence that either Plaintiff furnished any material to Defendant.

The Court finds that Plaintiffs have offered sufficient summary judgment evidence to raise material fact issues. Defendant’s motion should be denied. This case is set for a jury trial on May

14, 2012.

It is therefore ORDERED that Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted, and in the Alternative, Motion for Summary Judgment (Dkt. #24) is hereby DENIED.

**SIGNED this 13th day of April, 2012.**

  
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AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE